



# The COVID-19 pandemic and tenants' rights

## A review of legal mandates that protect tenants statewide and others specific to the Bay Area

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With the COVID-19 pandemic leaving most people sheltering in place and many people unemployed, the question on many people's minds is how they are going to pay their rent. In response to these concerns, authorities at the federal, state and local levels have enacted emergency measures that impact landlords, tenants and superior court procedures regarding evictions during this crisis. San Francisco, Oakland, Berkeley, Hayward, and San Jose have all enacted eviction moratoriums as well as Alameda, Marin, and San Mateo Counties.

Although the intent behind each of these eviction moratoriums is the same, to protect tenants who cannot pay their rent due to the COVID-19 pandemic, they each have different requirements for tenants. This article will discuss the protections offered by some of these eviction moratoriums along with the requirements tenants need to meet to have the protections. Since the eviction moratoriums and local superior court rules continue to change on a regular basis, this article will discuss changes as of April 22, 2020.

### Federal eviction moratorium

In March, Congress enacted the CARES Act, a \$2 trillion aid package to address the pandemic. Section 4024(b) of the CARES Act prohibits landlords of certain covered rental dwellings from initiating eviction proceedings, or charging late fees or other penalties against a tenant for nonpayment of rent. The protections began on March 27, 2020 and will end on July 25, 2020 unless extended.

The CARES Act's eviction protections only apply to certain dwellings, which are rental units in properties: (1) that participate in federal assistance programs, (2) are subject to a "federally backed mortgage loan," or (3) are subject to a "federally backed multifamily mortgage loan." Covered federal assistance programs include public housing, Housing Choice Vouchers and Section 8 Project-Based Rental Assistance. Tenants are still required to pay the rent owed after the protection period ends.

### Executive orders affecting statewide evictions

On March 4, 2020, California Governor Gavin Newsom proclaimed a State of Emergency in California as a result of COVID-19. On March 16, Governor Newsom issued Executive Order N-28-20, suspending state law limitations on local jurisdictions that impose restrictions on evictions.

On March 27, 2020, Governor Newsom issued Executive Order N-37-20, temporarily restricting the ability of landlords to evict residential tenants for nonpayment of rent if the failure to pay rent is due to the impacts of the COVID-19. Executive Order N-37-20 gives any tenant who is served with an eviction complaint based on non-payment of rent 60 days to respond to the complaint, rather than the typical five (5) days under Code of Civil Procedure section 1167, so long as the tenant satisfies all of the following requirements: (1) Prior to March 27, 2020, the tenant paid rent due to the landlord and (2) the tenant notifies the landlord in writing before rent is due or no later than 7 days after the rent was due, that the tenant needs to delay all or some payment of rent because of an inability to

pay the full amount due to reasons related to COVID-19.

Reasons related to COVID-19 include, but are not limited to: the tenant was unavailable to work because the tenant was sick with a suspected or confirmed case of COVID-19 or caring for a household or family member who was sick with a suspected or confirmed case of COVID-19; the tenant experienced a lay-off, loss of hours, or other income reduction resulting from COVID-19, the state of emergency, or related government response; or the tenant needed to miss work to care for a child whose school was closed in response to COVID-19.

Under the Executive Order, the tenant must retain verifiable documentation such as termination notices, payroll checks, pay stubs, bank statements, medical bills, or signed letters or statements from an employer or supervisor explaining the tenant's changed financial circumstances supporting the tenant's assertion of an inability to pay. The protections are in effect through May 31, 2020. Nothing in the Order relieves a tenant of liability for unpaid rent.

The Executive Order also restricts the ability of law enforcement, e.g., the local sheriff, from enforcing any eviction order against a tenant that meets the conditions of the Order.

The Judicial Council also enacted an order regarding evictions. The Judicial Council's action, effective April 6, 2020, applies to all evictions, regardless of cause, and will remain in effect until 90 days after Governor Newsom declares an end to the current state of emergency. Under the order by the Judicial Council, a court may not issue a summons on a complaint for unlawful detainer unless the court finds, in its discretion and on



the record, that the action is necessary to protect the public health or safety.

The same standard applies regarding a court entering a default or default judgment for restitution in an unlawful detainer action for failure of the defendant to appear unless the court finds both of the following: (1) the action is necessary to protect public health and safety; and (2) the defendant has not appeared in the action within the time provided by law, including by an applicable executive order. The courts are making decisions about what constitutes an action that is necessary to protect public health or safety on a case-by-case basis.

## San Francisco and Oakland eviction moratoriums

### *San Francisco*

On March 13, 2020, San Francisco Mayor London Breed ordered a temporary 30-day suspension of a landlord's ability to evict tenants who were unable to pay rent due to financial impacts caused by COVID-19. Mayor Breed then supplemented her order on March 23, 2020 to clarify and expand the prior moratorium. The March 23, 2020 supplemental order prohibits all residential evictions except evictions due to violence, threats of violence, or health and safety issues or the state Ellis Act, for 60 days after the Mayor's order expires on April 22 – or until June 22, 2020.

### *Nonpayment-of-rent evictions in San Francisco*

If a tenant misses a rent payment that becomes due on or after March 13, 2020, the landlord may not evict the tenant if the tenant provides notice within thirty days of the rent being due that they are unable to pay rent due "to financial impacts of COVID19." The tenant must provide notice to their landlord each time he or she misses a payment. The tenant also should not wait for a late notice to provide this notice to the landlord. Under the moratorium, "financial impacts" means a substantial loss of household income due to business closure, loss of compensable hours of work or wages,

layoffs, or extraordinary out-of-pocket medical expenses. A financial impact is "related to COVID-19" if it was caused by the COVID-19 pandemic, the Mayor's Proclamation, the Health Officer's Declaration of Local Health Emergency, or public health orders related to COVID-19 from local, state, or federal authorities.

Within seven days of providing notice to the landlord, the tenant must also provide written documentation or other objectively verifiable information that due to the financial impacts of COVID-19 the tenant is unable to pay rent. A letter from the tenant detailing the financial impacts of COVID-19 meets this documentation requirement under the eviction moratorium. Tenants are not required to withdraw money from savings or 401(k) accounts to meet rent obligations and therefore do not need to provide documentation related to finances, such as bank statements. If the tenant provides the documentation, they have an additional month after the date of providing the documentation to pay the rent. If the tenant does not pay the rent after one month, the landlord must provide the tenant written notice of the breach *and* must discuss with the tenant in good faith to develop a payment plan for the tenant.

When a tenant pays rent during this moratorium, landlords are required to apply rent payments to the month the tenant pays rent. For example, if a tenant does not pay April's rent and then pays rent in May, the landlord is supposed to apply the rent to May instead of April. This is in place to prevent landlords from claiming non-payment for a month outside of the moratorium period. However, to ensure the rent goes to the correct month, tenants should note on their payment which month the payment should be applied to.

A tenant who properly provides notice and documentation to the landlord then has up to six months to pay the rent owed to the landlord before the landlord can recover possession for nonpayment

of rent. Landlords can provide additional time if they choose or the landlords may request documentation of the ongoing inability to pay. Tenants must pay when they can, but a failure to timely respond to a follow-up request for documentation invalidates the six-month extension period.

If a landlord proceeds with serving any notice during this time, they must include a new form – "Notice to Tenant Regarding the Existence of a Temporary Eviction Moratorium due to COVID-19" with the notice. The form is available at [www.sfrb.org](http://www.sfrb.org).

### *Court orders regarding unlawful detainers*

The period from April 6, 2020, through June 19, 2020, is deemed a holiday for purposes of computing time under Code of Civil Procedure section 1167, with the exception of unlawful detainers cases. An unlawful detainer action can proceed if the court finds in its discretion *and* on the record that the action is necessary to protect public health. This determination shall be based on evidence submitted by the parties. The landlord has to submit such evidence at least 24 hours prior to the hearing/trial call or appear *ex parte*. The tenant may then submit evidence in advance of the hearing/trial call or appear *ex parte* or at the hearing.

Hearing dates for all law and motion matters in unlawful detainer cases will be continued by the court to a date after June 19, 2020. All new motions filed in unlawful detainer cases will be assigned a hearing date on or after June 22, 2020.

Trials and Mandatory Settlement Conferences in unlawful detainer cases will be continued for at least 90 days on a rolling basis, with the exception of unlawful detainer cases resulting from violence, threats of violence, or health and safety issues. Jury trials in unlawful detainer cases resulting from violence, threats of violence, or health and safety issues may be continued for a week on a rolling basis based on availability of jurors.



No defaults or default judgments will be entered by the Clerk of the Court unless a determination is made that the action is necessary to protect public health and safety and the defendant has not appeared in the action within the time provided by law, including by any applicable executive order. Such determination may be requested by an ex parte application.

#### **Oakland**

On March 27, 2020, the Oakland City Council passed an emergency order, restricting landlords from evicting residential tenants during the COVID-19 pandemic through May 31, 2020. The order makes it an absolute defense to any eviction including if the notice was served or expired, or that the complaint was filed or served, during the local emergency. Evictions that are covered include: evictions for cause, without cause, breach of lease, owner move-in or requests for repairs.

Evictions that are still allowed are actions under the Ellis Act or evictions when the tenant poses an imminent threat to the health and safety of other occupants of the property and the threat is stated in the notice as the grounds for the eviction.

#### **Nonpayment-of-rent evictions in Oakland**

A residential tenant cannot be evicted for missed rent due during the local emergency if the rent was unpaid because of a substantial reduction in household income or substantial increase in expenses resulting from the pandemic. This includes if the tenant suffered a loss of employment or a reduction in hours, was unable to work because their children were out of school, was unable to work because they were sick with COVID-19, caring for a household or family member who was sick with COVID-19, they were complying with a recommendation from a government agency to self-quarantine, or they incurred substantial out-of-pocket medical expenses due to COVID-19. Under the Oakland order, there is no notification requirement. It is recommended that the tenant communicate in writing with the landlord of his or her inability to pay rent.

Moreover, the tenant should keep records and notes of all communications with the landlord.

Tenants can negotiate rent deferment agreements with their landlords. If they do, these agreements could include a temporary reduction in rent or a payment plan for at least one year. Tenants need to ensure these agreements do not have clauses that waive a tenant's rights or allow a landlord to get immediate possession in the event of nonpayment. If the tenant and landlord come to an agreement temporarily decreasing the tenant's rent, the landlord must comply with all noticing requirements for rent increases, unless the agreement specifically states when the rent will return to the original rent amount at a date certain. Some landlords are also agreeing to waive a tenant's back rent all together.

The Oakland order requires landlords to accept rent from a third party, such as a charity organization. Landlords are prohibited from levying late fees during this period and prohibited from imposing rent increases above 3.5% until June 30, 2020.

#### **Court orders regarding unlawful detainers**

There is a continued court closure through May 1, 2020. March 17 through May 1, 2020 is considered a Court holiday. As a result, all civil jury trials through May 1, 2020 have been taken off calendar. All unlawful detainer proceedings, including evictions, have been stayed through the extended closure period including May 3, 2020.

#### **Contra Costa County**

As of April 22, 2020, Contra Costa County has not enacted an eviction moratorium. However, the Contra Costa County Board of Supervisors has agreed to consider an ordinance for an eviction moratorium. The proposed ordinance will likely ban eviction for at least 120 days from the end of California's shelter-in-place order. This will give tenants more time to pay landlords rent.

Although an eviction moratorium has not yet been adopted in Contra Costa

County, under the court rule adopted by the Judicial Council of California, no new unlawful detainer filings will be accepted. For those unlawful detainer matters involving violence, threats of violence, and/or health and safety issues, a landlord must first seek a restraining order, and then seek permission from the hearing judge to file an unlawful detainer action.

#### **Landlords' attempts to evict despite eviction moratoriums**

Unfortunately, despite these federal, state and local protections, some landlords are still attempting to wrongfully evict tenants. As more months go by with tenants unable to pay rent due to unemployment or other COVID-19-related financial issues, landlords are going to get even more desperate and we will likely see an upswing in attempts to evict tenants.

Alarming, landlords are already using threats or self-help to evict tenants. Self-help evictions such as lock-outs, are a violation of Civil Code section 789.3. Under Civil Code section 789.3, a landlord is not permitted to terminate occupancy of any tenancy by changing the locks, removing doors or windows, terminating utility services or removing a tenant's personal property. Any landlord who violates Civil Code section 789.3 is liable for actual damages, a \$100 per day penalty and reasonable attorneys' fees.

#### **Conclusion**

The COVID-19 pandemic has left many people in California unemployed and worried about how they will pay their monthly bills including their rent. State and some local governments have provided protections to tenants who are unable to pay their rent due to the financial impacts of COVID-19. However, these protections have very specific requirements a tenant must meet in order to be protected from eviction. This makes it vital that tenant attorneys know what the requirements are under each order so they can fully inform tenants of their rights and responsibilities.



MAY 2020

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